

ALAMEDA COUNTY

Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

Chapter 465, Statutes of 1976; Chapter 775, 1173, 1174, and 1178,
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165,
Statutes of 1989; and Chapter 675, Statutes of 1990

July 1, 2002, through June 30, 2005



JOHN CHIANG
California State Controller

November 2007



JOHN CHIANG
California State Controller

November 16, 2007

The Honorable Patrick O'Connell
Alameda County Auditor-Controller
1221 Oak Street, Suite 249
Oakland, CA 94612

Dear Mr. O'Connell:

The State Controller's Office audited the costs claimed by Alameda County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapter 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2002, through June 30, 2005.

The county claimed \$388,851 (\$388,931 less an \$80 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$79,594 is allowable and \$309,257 is unallowable. The unallowable costs resulted from the county claiming costs that were ineligible for reimbursement under the mandated program and costs that were unsupported. The State paid the county \$5. The State will pay allowable costs claimed that exceed the amount paid, totaling \$79,589, contingent upon available appropriations.

Unsupported salaries and benefits total \$63,880. If the county subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities, and the number of activities performed, we will revise the final audit report as appropriate.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk:wm

cc: Sherie Peterson

Auditor-Controller's Office

Alameda County

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Alameda County for the legislatively mandated Peace Officer's Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapter 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2002, through June 30, 2005. The last day of fieldwork was July 20, 2006.

The county claimed \$388,851 (\$388,931 less an \$80 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$79,594 is allowable and \$309,257 is unallowable. The unallowable costs resulted from the county claiming costs that were ineligible for reimbursement under the mandated program and costs that were unsupported. The State paid the county \$5. The State will pay allowable costs claimed that exceed the amount paid, totaling \$79,589, contingent upon available appropriations.

Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. CSM further defined that activities covered by due process are not reimbursable.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000, and corrected them on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative

Appeal, Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist local agencies and school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2002, through June 30, 2005.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Alameda County claimed \$388,851 (\$388,931 less an \$80 penalty for filing a late claim) for costs of the Peace Officers Bill of Rights Program. Our audit disclosed that \$79,594 is allowable and \$309,257 is unallowable. The State paid the county \$5. The State will pay allowable costs claimed that exceed the amount paid, totaling \$79,589, contingent upon available appropriations.

Unsupported salaries and benefits total \$63,880. If the county subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities, and the number of activities performed, we will revise the final audit report as appropriate.

Views of Responsible Officials

We issued a draft audit report on August 31, 2007. Sherie Peterson, Alameda County Auditor-Controller's Office, responded by e-mail dated October 8, 2007 (Attachment), disagreeing with the audit results. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of Alameda County, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

Schedule 1— Summary of Program Costs July 1, 2001, through June 30, 2004

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Salaries	\$ 74,580	\$ 9,676	\$ (64,904)	Finding 1
Benefits	30,459	4,050	(26,409)	Finding 1
Travel and training	808	808	—	
Total direct costs	105,847	14,534	(91,313)	
Indirect costs	24,857	3,256	(21,601)	Finding 1
Total direct and indirect costs	130,704	17,790	(112,914)	
Less late filing penalty	(80)	(80)	—	
Total program costs	<u>\$ 130,624</u>	17,710	<u>\$ (112,914)</u>	
Less amount paid by the State		(5)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 17,705</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Salaries	\$ 53,185	\$ 8,991	\$ (44,194)	Finding 1
Benefits	15,519	3,414	(12,105)	Finding 1
Services and supplies	2,733	—	(2,733)	Finding 2
Total direct costs	71,437	12,405	(59,032)	
Indirect costs	25,990	4,097	(21,893)	Finding 1
Total program costs	<u>\$ 97,427</u>	16,502	<u>\$ (80,925)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 16,502</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Salaries	\$ 82,756	\$ 21,963	\$ (60,793)	Finding 1
Benefits	22,746	8,428	(14,318)	Finding 1
Services and supplies	1,853	981	(872)	Finding 2
Total direct costs	107,355	31,372	(75,983)	
Indirect costs	53,445	14,010	(39,435)	Finding 1
Total program costs	<u>\$ 160,800</u>	45,382	<u>\$ (115,418)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 45,382</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2001, through June 30, 2004</u>				
Salaries	\$ 210,521	\$ 40,630	\$ (169,891)	
Benefits	68,724	15,892	(52,832)	
Travel and training	808	808	—	
Services and supplies	4,586	981	(3,605)	
Total direct costs	284,639	58,311	(226,328)	
Indirect costs	104,292	21,363	(82,929)	
Total direct and indirect costs	388,931	79,674	(309,257)	
Less late filing penalty	(80)	(80)	—	
Total program costs	<u>\$ 388,851</u>	79,594	<u>\$ (309,257)</u>	
Less amount paid by the State		(5)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 79,589</u>		
<u>Summary by Cost Component</u>				
Administrative activities	\$ 85,035	\$ 33,387	\$ 51,648	
Administrative appeals	20,438	2,589	17,849	
Interrogations	189,515	23,621	165,894	
Adverse comment	93,943	20,077	73,866	
Subtotal	388,931	79,674	(309,257)	
Less late filing penalty	(80)	(80)	—	
Total program costs	<u>\$ 388,851</u>	<u>\$ 79,594</u>	<u>\$ (309,257)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Unallowable salaries and benefits, and related indirect costs

The county claimed \$279,245 in salaries and benefits, and \$104,292 in related indirect costs for the audit period. Salaries and benefits, totaling \$222,723, were unallowable because the activities claimed were not identified in the parameters and guidelines as reimbursable costs, costs were not adequately documented, or productive hourly rates were underclaimed. Related indirect costs total \$82,929.

Following is a summary of the claimed, allowable, and unallowable costs for the audit period:

	<u>Claimed Costs</u>	<u>Allowable Costs</u>	<u>Audit Adjustment</u>
Salaries and benefits:			
Administrative activities:			
Sheriff's Department	\$ 18,207	\$ 4,760	\$ (13,447)
Probation Department	39,811	19,193	(20,618)
Human Resources Department	1,380	—	(1,380)
Subtotal	<u>59,398</u>	<u>23,953</u>	<u>(35,445)</u>
Administrative appeals:			
Sheriff's Department	6,865	—	(6,865)
Probation Department	5,575	1,985	(3,590)
Human Resources Department	2,317	—	(2,317)
Subtotal	<u>14,757</u>	<u>1,985</u>	<u>(12,772)</u>
Interrogations:			
Sheriff's Department	83,575	8,528	(75,047)
Probation Department	57,833	7,904	(49,929)
Subtotal	<u>141,408</u>	<u>16,432</u>	<u>(124,976)</u>
Adverse comment:			
Sheriff's Department	44,402	12,241	(32,161)
Probation Department	19,280	1,911	(17,369)
Subtotal	<u>63,682</u>	<u>14,152</u>	<u>(49,530)</u>
Total salaries and benefits	<u>279,245</u>	<u>56,522</u>	<u>(222,723)</u>
Related indirect costs	<u>104,292</u>	<u>21,363</u>	<u>(82,929)</u>
Total	<u>\$ 383,537</u>	<u>\$ 77,885</u>	<u>\$ (305,652)</u>
Recap of salaries and benefits by department:			
Sheriff's Department	\$ 153,049	\$ 25,529	\$ (127,520)
Probation Department	122,499	30,993	(91,506)
Human Resources Department	3,697	—	(3,697)
Total	<u>\$ 279,245</u>	<u>\$ 56,522</u>	<u>\$ (222,723)</u>

Administrative Activities

For Administrative Activities, the county claimed \$59,398 in salaries and benefits (\$18,207 by the Sheriff's Department, \$39,811 by the Probation Department, and \$1,380 by the Human Resources Department for the audit period. We determined that \$37,691 was unallowable as follows: estimated costs totaling \$15,410 (\$9,123 by the Sheriff's Department and \$6,287 by the Probation Department), costs for ineligible activities

totaling \$5,194 (\$4,653 by the Sheriff's Department and \$541 by the Probation Department), unsupported Probation Department training costs totaling \$15,707, and \$1,380 for Human Resources Department costs that were not supported by any documentation.

In addition, costs were understated by \$2,246 over the audit period due to understated Probation Department salary and benefit rates totaling \$1,917 and by understated Sheriff's Department salary and benefit rates totaling \$329.

The parameters and guidelines allow the following ongoing activities:

1. Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities;
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and
3. Updating the status of the Police Officers Procedural Bill of Rights (POBOR) cases.

Sheriff's Department

The Sheriff's Department claimed costs for the eligible activities to update the status of POBOR cases and for assistance with the installation of a new database to track POBOR cases totaling \$9,123 in FY 2002-03 that were based on estimates and not supported by actual time records or other corroborating documentation. In addition, the Sheriff's Department claimed ineligible clerical activities totaling \$4,653 (\$2,753 in FY 2003-04 and \$1,900 in FY 2004-05) for filing, duplicating, proofreading, receiving complaints, and preparing letters to complainants. We noted that the county performed the eligible activity of updating the status of POBOR cases. However, the eligible costs were not segregated from the ineligible hours and it was not possible to determine the amount of clerical time that was reimbursable for this activity.

In addition, supported costs were underclaimed by \$329 (\$65 in FY 2003-04 and \$264 in FY 2004-05) due to the use of incorrect productive hourly rates and understated benefit rates. Rates were understated due to calculation errors.

Probation Department

The Probation Department claimed costs for the eligible activities of updating policies and procedures and developing/updating an internal database used to track POBOR cases totaling \$6,287 (\$3,772 in FY 2002-03, \$984 in FY 2003-04, and \$1,531 in FY 2004-05). However, all of the costs were based on estimates and were not supported by actual time records or other corroborating documentation. In addition, \$834 was claimed in FY 2002-03 and \$14,873 was claimed in FY 2004-05 for training costs that were unsupported; \$541 was claimed in FY 2002-03 for the ineligible activity of coordinating training classes.

Supported costs were underclaimed by \$1,917 (\$651 in FY 2002-03, \$344 in FY 2003-04, and \$922 in FY 2004-05), due to the use of incorrect employee salary and benefit rates. Rates were understated due to calculation errors.

Human Resources Department

The Human Resources Department claimed \$1,380 for salaries and benefits that were not supported by any documentation.

Administrative Appeals

For Administrative Appeals, the county claimed \$14,757 in salaries and benefits (\$6,865 by the Sheriff's Department, \$5,575 by the Probation Department, and \$2,317 by the Human Resources Department) for the audit period. We determined that \$13,094 was unallowable due to estimated costs totaling \$6,865 claimed by the Sheriff's Department, ineligible activities totaling \$3,912 claimed by the Probation Department, and unsupported costs totaling \$2,317 claimed by the Human Resources Department.

In addition, supported costs were understated by \$322 over the audit period due to understated Probation Department salary and benefit rates.

The parameters and guidelines allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

Sheriff's Department

The Sheriff's Department claimed costs totaling \$6,865 for Commander's preparation and review prior to administrative appeal hearings, as well as participation in the appeal hearings. However, all time associated with these activities was based entirely on estimates and not supported by actual time records or other corroborating documentation.

Probation Department

The Probation Department properly claimed costs for the administrative hearings held for those employees who appealed the disciplinary outcomes of their cases. However, certain disciplinary actions are not reimbursable under the mandated program because they are considered to be part of normal due-process activities. This includes letters of reprimand, suspensions, demotions, and salary reductions for permanent employees. We reviewed the county's administrative appeal cases and made audit adjustments totaling \$3,912 for those cases that fit these criteria.

In addition, allowable costs were understated by \$229 due to incorrect salary rates used in FY 2002-03 and by \$93 due to the use of incorrect employee benefit rates in FY 2003-04. Salary rates and employee benefit rates were understated due to calculation errors.

Human Resources Department

The Human Resources Department claimed \$2,317 for salaries and benefits that were not supported by any documentation.

Interrogations

For Interrogations, the county claimed \$141,408 in salaries and benefits (\$83,575 by the Sheriff's Department and \$57,833 by the Probation Department) for the audit period. We determined that \$126,220 was unallowable (\$75,660 due to ineligible Sheriff's Department activities and \$50,560 due to ineligible Probation Department activities.)

In addition, costs were understated by \$1,244 over the audit period due to understated Probation Department salary and benefit rates totaling \$631 and by understated Sheriff's Department salary and benefit rates totaling \$613.

The parameters and guidelines state that specific identified Interrogation activities are reimbursable when a Peace Officer is under investigation or becomes a witness to an incident under investigation and is subjected to an interrogation by the commanding officer or any other member of the employing public safety department during off-duty time if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, section IV(C), state that claimants are not eligible for Interrogation activities when an interrogation of a peace officer is in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the Commission on State Mandates Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

The parameters and guidelines, section IV(C), also state that claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities.

Sheriff's Department

The county claimed \$75,660 for the unallowable Sheriff's Department activities of conducting interrogations of accused and witness officers during regular duty hours, travel time to conduct witness interviews, transcribing statements when officers did not record their interrogations, and performing tape reviews and corrections.

In addition, allowable costs were underclaimed by \$613 in FY 2004-05 due to the use of incorrect productive hourly rates and employee benefit rates. Rates were understated due to calculation errors.

Probation Department

The county claimed \$50,560 for the unallowable Probation Department activities of conducting interrogations of accused and witness officers during regular duty hours, travel time to conduct witness interviews, transcribing statements when officers did not record their interrogations, and performing tape reviews and corrections.

In addition, allowable costs were underclaimed by \$631 (\$130 in FY 2002-03, \$149 in FY 2003-04, and \$352 in FY 2004-05) due to the use of incorrect productive hourly rates and employee benefit rates. Rates were understated due to calculation errors.

Adverse Comment

For adverse comment, the county claimed \$63,682 (\$44,402 by the Sheriff's Department and \$19,280 by the Probation Department) during the audit period. We determined that \$50,475 was unallowable (\$17,587 due to ineligible Probation Department activities, \$22,201 due to estimated Sheriff's Department costs, \$15,608 due to ineligible Sheriff

Department activities, and \$4,921 of understated costs for the Sheriff's Department activities of command staff review that were not claimed in FY 2002-03.

In addition, costs were understated by \$945 over the audit period due to understated Probation Department salary and benefit rates totaling \$218 and understated Sheriff's Department salary and benefit rates totaling \$727.

Depending on the circumstances surrounding an Adverse Comment, the parameters and guidelines allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

Sheriff's Department

The Sheriff's Department claimed costs totaling \$22,201 during the audit period for command staff review that were based only on estimates and were not supported by actual time records or other corroborating documentation. The department claimed unallowable costs totaling \$15,608 in FY 2004-05 for activities that are not reimbursable under the mandated program. These activities included preparations of complainant paperwork, conducting initial investigations based on complaints, preparing interrogation questions, and preparing case summary and Internal Affairs (IA) review reports. We also noted costs totaling \$4,921 for FY 2002-03 that were not in the county's claim for command staff review that were adequately supported and allowable.

In addition, allowable costs were understated by \$727 due to the use of incorrect salary and benefit rates in FY 2004-05. Rates were understated due to calculation errors.

Probation Department

The Probation Department claimed unallowable costs totaling \$17,587 (\$9,163 in FY 2003-04 and \$8,424 in FY 2004-05) for activities that are not reimbursable under the mandated program. These activities included

review and preparation of complainant paperwork, conducting initial investigations based on complaints, preparing questions prior to interrogations, and preparing case summary and Internal Affairs (IA) review reports upon case completion.

In addition, allowable costs were understated by \$218 due to the use of understated salary rates in FY 2004-05 and understated employee benefit rates in FY 2003-04 and FY 2004-05. Rates were understated due to calculation errors.

Overstated Productive Hourly Rates

As noted within the narrative above, the county understated salaries and benefits by \$4,757 (\$3,088 understated Probation Department costs and \$1,669 understated Sheriff's Department costs) during the audit period because it misstated salary and benefit rates during the audit period.

The Sheriff's Department calculated employee benefit rates for FY 2004-05 for its employees by dividing total benefit amounts by total compensation amounts (benefits plus salaries) instead of dividing by salaries only. This caused an understatement of employee benefit rates of \$1,080. In addition, an incorrect employee benefit rate was inadvertently used for one employee in FY 2003-04, causing costs to be understated by \$65. The department also miscalculated productive hourly rates for all employees claimed in FY 2004-05. This resulted in an understatement of allowable costs totaling \$524.

The Probation Department understated productive hourly rates by \$1,075 (\$1,010 in FY 2002-03, and \$65 in FY 2004-05) because it used understated salary rates in error when calculating its employees' productive hourly rates. The department also calculated employee benefit rates for FY 2003-04 and FY 2004-05 by dividing total benefit amounts by total compensation amounts (benefits plus salaries) instead of dividing by salaries. This caused understatements of employee benefit rates of \$1,547 in FY 2003-04 and \$466 in FY 2004-05.

Summary

The audit adjustments for salaries and benefits are summarized as follows:

Cost Category	Fiscal Year			Total
	2002-03	2003-04	2004-05	
Salaries and benefits:				
Sheriff's Department	\$ (55,167)	\$ (38,481)	\$ (33,872)	\$ (127,520)
Probation Department	(32,449)	(17,818)	(41,239)	(91,506)
Human Resources Department	(3,697)	—	—	(3,697)
Subtotal	(91,313)	(56,299)	(75,111)	(222,723)
Related indirect costs	(21,601)	(21,893)	(39,435)	(82,929)
Audit adjustment	<u>\$ (112,914)</u>	<u>\$ (78,192)</u>	<u>\$ (114,546)</u>	<u>\$ (305,652)</u>

The parameters and guidelines for POBOR, adopted by the COSM on July 27, 2000, define the criteria for procedural protection for the county's peace officers.

The parameters and guidelines, section IV, Reimbursable Activities, outline specific tasks that are deemed above the due process clause. The statement of decision on which the parameters and guidelines were based noted that due process activities were not reimbursable.

The parameters and guidelines, section V-A(1), Salaries and Benefits, require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

The parameters and guidelines, section VI, Supporting Data, require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs and that claimed costs are based on actual costs that are properly supported.

County's Response

Response: The Alameda County Sheriff's Office already has procedures to claim reimbursement for eligible costs. The existing source documents ensure that all allowable costs are captured and provide support for the claims. The Alameda County Sheriff's Office and the State Controller Office differ in the interpretation of allowable activities as currently stated in the Parameters and Guidelines.

Throughout the state, local agencies disagree with the Controller's interpretation of the Parameters and Guidelines. The disagreement includes the eligibility of certain activities for reimbursement. The State Controller's Office interpretation of the law is not consistent with the original intent of the legislation. The mandate imposes a higher level of service and that the resulting costs are eligible for reimbursement.

Administrative Activities

Sheriff's Office and Probation

The eligible on-going activities include "updating the status of the POBAR cases". The definition of "update" is vague and unclear in the Parameters and Guidelines. The secretary's clerical activities (such as filing, duplicating, proofreading, receiving complaints and preparing letters) are part of updating POBAR cases and are reimbursable.

Administrative Appeals*Sheriff's Office*

The county's documentation proves that the activities were performed. The Command staff's extensive experience in processing internal affair cases is reflected in the case logs. A conservative average time was used and the amount of time claimed is reasonable.

Probation

The Probation department provided sufficient documentation to support the costs. The POBAR mandate exceeds the employer's normal responsibilities before disciplinary action is implemented; and the costs of these additional activities is reimbursable.

Interrogations*Sheriff's Office*

The POBAR mandate exceeds the employer's normal responsibilities before disciplinary action is implemented. The expanded duties make it necessary for the Sheriff's Office to have a dedicated Internal Affairs Unit that performs interrogations during regular duty time. These costs are appropriate and reimbursable.

Probation

POBAR law enhanced procedural protection for employees, thus increasing time and effort in disciplinary actions. The claims were prepared in a manner consistent with the Parameters and Guidelines. Costs incurred are appropriate and reimbursable.

Adverse Comments*Sheriff's Office*

Under the Sheriff's Office interpretation of adverse comment the costs claimed are eligible and properly supported.

The documentation proves that the activities were performed. The Command staff's extensive experience in processing internal affair cases is reflected in the case logs. A conservative average time was used and the amount of time claimed is reasonable.

Probation

The activities performed for adverse comment were eligible and properly supported. These costs are mandated and reimbursable.

SCO's Comments

The findings and recommendation remain unchanged.

Our audit was based on reimbursable activities identified in the parameters and guidelines, adopted by the Commission on State Mandates (CSM) on July 27, 2000. We concur that these parameters and guidelines have been the subject of widespread disagreement as to what

activities are actually reimbursable. This mandate has already been pled twice before the CSM. This resulted in the adoption of the original statement of decision, dated November 30, 1999, and the parameters and guidelines, dated July 27, 2000. Chapter 72, Statutes of 2005, section 6 (AB 138), added Section 3313 to the Government Code and directed the CSM to review the statement of decision to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal. 4th 859 and other applicable court decisions. CSM reviewed its original findings and adopted a statement of decision upon reconsideration on May 1, 2006. The amended parameters and guidelines were adopted on December 4, 2006, for costs incurred subsequent to July 1, 2006.

Except for changes to allowable activities for the cost components of administrative appeal for probationary and at-will peace officers (pursuant to amended Government Code section 3304) and adverse comment (for punitive actions protected by the due process clause), reimbursable activities did not change from the original parameters and guidelines, although a lot greater clarity was provided as to what activities are and are not allowable under the mandated program.

Our audit findings accurately reflect the eligible activities as described in the adopted parameters and guidelines. If the county disagrees, it can exercise its right to take its case to the CSM or other legal venue for resolution.

Administrative Activities

By focusing on the definition of the word “updating,” the county is taking the reimbursable activity of “updating the status of POBOR cases” out of context. The reimbursable activity under this cost component is “updating the status of the POBOR cases,” not just updating. CSM, in its staff analysis for the original proposed parameters and guidelines for this mandate, noted, “before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases.” “Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for” updating the status report of the POBOR cases” [emphasis added].

Therefore, it is clear that the county’s contention that clerical activities such as filing, dictating, proofreading, receiving complaints, and preparing letters are reimbursable activities is incorrect because they are part of maintaining files for cases, which are activities that were being conducted before the test claim legislation was enacted.

CSM provided further clarification for this activity in its amended parameters and guidelines that were adopted on December 4, 2006. While not applicable to this audit, the reimbursable activity was reworded to state, “updating the status report of mandate-reimbursable POBOR activities.” “Updating the status report of mandate-reimbursable activities” means tracking the procedural status of the mandate-reimbursable activities only. Reimbursement is not required to maintain

or update the cases, set up the cases, review the case, evaluate the case, or close the cases.” This definition provides much greater clarity as to what is and what is not reimbursable under the cost component of Administrative Activities.

In addition, the audit report also notes that unallowable costs include estimated costs claimed totaling \$15,410 under this cost component, which represents 41% of the total finding amount.

Administrative Appeals

Sheriff's Office

The county contends that its average time was conservative and the amount of time claimed was reasonable and accordingly, should be allowable. Whether the time claimed was reasonable or not is not the issue. The parameters and guidelines are clear in their requirement that claimants “specify the actual time devoted to each reimbursable activity by each employee.”

By claiming estimated costs with no additional supporting or corroborating documentation, the county did not meet the requirement of reporting *actual* costs. In addition, there is no way for SCO to verify whether the time claimed by the county was reasonable or not in the absence of actual time records.

Probation

We concur that the Probation Department provided sufficient documentation to support the costs that it claimed. However, the county misunderstands reimbursable activities under this cost component. The county’s statement that the POBOR mandate exceeds the employer’s normal responsibilities before disciplinary action is implemented is correct. However, to state that the cost of these additional activities is reimbursable is incorrect.

In its original statement of decision, dated November 30, 1999, CSM noted the following:

Thus, the Commission found that the administrative appeal would be required in the absence of the test claim legislation when a permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or a probationary or at-will employee is dismissed and the employee’s reputation and ability to obtain future employment is harmed by the dismissal. Under these circumstances, the Commission determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision c, the cost incurred in providing the administrative appeal in the above circumstances would not constitute “costs mandated by the state” since the administrative appeal merely implements the requirements of the United States Constitution.

Accordingly, our audit report is consistent with CSM when it states, “certain disciplinary actions are not reimbursable under the mandated program because they are considered to be part of normal due-process activities. This includes letters of reprimand, suspensions, demotions, and salary reductions for permanent employees. We reviewed the county’s administrative appeal cases and made audit adjustments . . . for those cases that fit these criteria.”

Interrogations

Sheriff’s Office and Probation Department

The county misunderstands reimbursable activities under this cost component. The county’s statement that the POBOR mandate exceeds the employer’s normal responsibilities before disciplinary action is implemented is correct. We also concur with the county’s statement that the expanded duties make it necessary for the Sheriff’s Office to have a dedicated Internal Affairs Unit that performs interrogations during regular time. We also concur with the statement that the POBOR law enhanced procedural protections for employees, thus increasing time and effort in disciplinary actions for the Probation Department. We do not concur with the county’s statement that these activities are reimbursable.

Our audit report notes that the unallowable costs for both departments were for the activities of conducting interrogations of accused and witnessing officers during regular duty hours, travel time to conduct witness interviews, transcribing statements when officers did not record their interrogations, and performing tape reviews and corrections.

In its staff analysis for the originally proposed parameters and guidelines, dated July 27, 2000, CSM stated the following about the activity of interrogations:

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant’s proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

In its staff analysis for the request to amend parameters and guidelines, dated December 4, 2006, CSM provided additional clarification, by stating:

Government Code section 3303, subdivision (a), establishes the timing of the interrogation and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. The statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation. Thus, investigation

services go beyond the scope of the test claim legislation and are **not** reimbursable. As explained by the courts, POBOR deals with labor relations. It does not interfere with the employer's right to manage and control its own police department.

Accordingly, our audit finding is consistent with CSM language concerning what is and what is not reimbursable under this cost component.

Adverse Comment

Sheriff's Department

The county contends that their average time was conservative and the amount of time claimed was reasonable and accordingly, should be allowable. Whether the time claimed was reasonable or not is not the issue. The program's parameters and guidelines are clear in their requirement that claimants "specify the actual time devoted to each reimbursable activity by each employee." By claiming estimated costs with no additional supporting or corroborating documentation, the county simply did not meet the requirement of reporting *actual* costs. In addition, there is no way for SCO to verify whether the time claimed by the county was reasonable or not in the absence of actual time records. We allowed \$4,921 for allowable activities that were adequately documented for FY 2002-03 under this cost component for command staff review activities that **were not** included in the county's claim.

During the audit exit conference, we discussed with the county the option of performing a time study. We believe that a valid time study conducted during the current period can properly support the average time required to conduct reimbursable activities under this cost component. For the unsupported costs, if the county subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the final report as appropriate.

Probation Department

We do not agree with the county's contention that the activities performed by the Probation Department were eligible for reimbursement. The audit report notes that unallowable costs were for the activities of review and preparation of complainant paperwork, conducting initial investigations based on complaints, preparing questions prior to interrogations, and preparing case summary and Internal Affairs (IA) review reports upon case completion. The parameters and guidelines state that reimbursable activities under this cost component include "review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing." None of the activities deemed unallowable in the audit report are included in this list of reimbursable activities.

Overstated Productive Hourly Rates

The county did not respond to this part of the audit finding.

FINDING 2— Ineligible services and supplies

The county claimed \$4,586 for services and supplies during the audit period. Services and supplies costs totaling \$3,605 were unallowable because certain activities claimed were not identified in the parameters and guidelines as reimbursable costs and some costs were not adequately documented.

Specifically, the Sheriff's Department claimed \$461 for audio recording tapes used by the Internal Affairs Unit during interrogation sessions of accused peace officers. However, a department spokesman noted that, with very few exceptions, accused officers do not record interrogations. Accordingly, the costs claimed for audio-recording tapes were determined to be unallowable since they did not meet the criteria for reimbursement.

The Probation Department claimed \$2,189 (\$1,694 in FY 2003-04 and \$498 in FY 2004-05) for unidentified services and supplies costs that were not supported by any documentation. The department also claimed \$955 for computer equipment costs in FY 2003-04 that could not be identified as increased costs incurred under this mandated program.

The parameters and guidelines, section IV-C(3), include the reimbursable activity of "Tape recording the interrogation when the peace officer employee records the interrogation. . . . Included in the foregoing is the cost of tape and storage, and the cost of transcription."

The parameters and guidelines, section V-A(2), state, for materials and supplies costs, that "only expenditures that can be identified as a direct cost of this mandate may be claimed."

The parameters and guidelines, section VI, state that "for audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the mandated program."

The audit adjustments are summarized as follows:

	Fiscal Year			Total
	2002-03	2003-04	2004-05	
Sheriff's Department:				
Audiotape costs	\$ —	\$ (87)	\$ (374)	\$ (461)
Probation Department:				
Unsupported costs	—	(1,691)	(498)	(2,189)
Ineligible costs	—	(955)	—	(955)
Subtotal	—	(2,646)	(498)	(3,144)
Total audit adjustment	\$ —	\$ (2,733)	\$ (872)	\$ (3,605)

Recommendation

We recommend the county establish and implement procedures necessary to ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

County's Response

Response: The Alameda County Sheriff's Office already has procedures to claim reimbursement for eligible costs. The existing source documents ensure that all allowable costs are captured and provide support for the claims. The Alameda County Sheriff's Office and the State Controller Office differ in the interpretation of allowable activities. Internal Affairs and the employee's representative tape all interrogations of peace officers.

SCO's Comments

The finding and recommendation remain unchanged. The county only addressed unallowable costs reported for the Sheriff's Department.

The parameters and guidelines, section IV-C(3), state that reimbursable activities include "Tape recording the interrogation when the peace officer employee records the interrogation. . . . Included in the foregoing is the cost of tape and storage, and the cost of transcription." A representative of the Sheriff's Internal Affairs Department stated to our auditors that "with very few and rare exceptions, accused officers do not record the interviews." Our audit finding was based on this representation.

The county's statement that the employees' representatives tape all interrogations of peace officers is new information not previously presented. If an employee representative (legal counsel and/or union representative) is in attendance at an employee's interrogation session and records the session on behalf of the employee, then the cost of tapes and storage would be reimbursable. If the county can provide additional data as to the interrogation sessions that included an employee representative and the number of tapes that were used for these sessions, we will modify the audit report accordingly.

**Attachment—
County's Response to
Draft Audit Report**

Spano, Jim

From: Peterson, Sherie, Auditor Agency [sherie.peterson@acgov.org]
Sent: Friday, October 12, 2007 12:17 PM
To: Spano, Jim
Cc: Lau, Ricky, Auditor Agency; Walker, Loren, Sheriff; Hsu, Patricia, Probation
Subject: Alameda County: POBAR audit response
Importance: High
Attachments: POBAR Audit Responses.doc

11/06/2007

October 8, 2007

Mr. Jim Spano, Chief
State Controller's Office
Mandated Cost Audits Bureau
Division of Audits
PO Box 942850
Sacramento, CA 94250-5874

RE: Draft Audit Report Response
Peace Officers Procedural Bill of Rights Program
Audit period July 1, 2002 through June 30, 2005

Finding 1 – Unallowable salary and benefit costs, and related indirect costs

Recommendation: The State recommends that the County establish and implement procedures to ensure that claimed costs include only eligible costs and that claimed costs are based on actual costs that are properly supported.

Response: The Alameda County Sheriff's Office already has procedures to claim reimbursement for eligible costs. The existing source documents ensure that all allowable costs are captured and provide support for the claims. The Alameda County Sheriff's Office and the State Controller Office differ in the interpretation of allowable activities as currently stated in the Parameters and Guidelines.

Throughout the state, local agencies disagree with the Controller's interpretation of the Parameters and Guidelines. The disagreement includes the eligibility of certain activities for reimbursement. The State Controller's Office interpretation of the law is not consistent with the original intent of the legislation. The mandate imposes a higher level of service and that the resulting costs are eligible for reimbursement.

Administrative Activities

Sheriff's Office and Probation

The eligible on-going activities include "updating the status of the POBAR cases". The definition of "update" is vague and unclear in the Parameters and Guidelines. The secretary's clerical activities (such as filing, duplicating, proofreading, receiving complaints and preparing letters) are part of updating POBAR cases and are reimbursable.

Administrative Appeals

Sheriff's Office

The County's documentation proves that the activities were performed. The Command staff's extensive experience in processing internal affair cases is reflected in the case logs. A conservative average time was used and the amount of time claimed is reasonable.

Probation

The Probation department provided sufficient documentation to support the costs. The POBAR mandate exceeds the employer's normal responsibilities before disciplinary action is implemented; and the cost of these additional activities is reimbursable.

Interrogations

Sheriff's Office

The POBAR mandate exceeds the employer's normal responsibilities before disciplinary action is implemented. The expanded duties make it necessary for the Sheriff's Office to have a dedicated Internal Affairs Unit that performs interrogations during regular duty time. These costs are appropriate and reimbursable.

Probation

POBAR law enhanced procedural protection for employees, thus increasing time and effort in disciplinary actions. The claims were prepared in a manner consistent with the Parameters and Guidelines. Costs incurred are appropriate and reimbursable.

Adverse Comments

Sheriff's Office

Under the Sheriff's Office interpretation of adverse comment the costs claimed are eligible and properly supported.

The documentation proves that the activities were performed. The Command staff's extensive experience in processing internal affair cases is reflected in the case logs. A conservative average time was used and the amount of time claimed is reasonable.

Probation

The activities performed for adverse comment were eligible and properly supported. These costs are mandated and reimbursable.

Finding 2 – Ineligible services and supplies

Recommendation: The State Controller's Office recommends establishing and implementing procedures to ensure that claimed costs include only eligible expenditures that are a result of performing mandated activities.

Response: The Alameda County Sheriff's Office already has procedures to claim reimbursement for eligible costs. The existing source documents ensure that all allowable costs are captured and provide support for the claims. The Alameda County Sheriff's Office and the State Controller Office differ in the interpretation of allowable activities. Internal Affairs and the employee's representative tape all interrogations of peace officers.

**State Controller's Office
Division of Audits
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